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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,684	01/04/2002	Thomas M. Weber	SD-6737	5011

7590 12/16/2003  
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EXAMINER

ROSENBERGER, RICHARD A

ART UNIT PAPER NUMBER

2877

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

10/040,684

Applicant(s)

WEBER ET AL.

Examiner

Richard A Rosenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 0402. 6) ☐ Other: \_\_\_\_

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1. Claims 13 and 23 are identical. It may be that the dependency of one or both claims is not as intended.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 8, 9, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hennessy (US 4,270,274).

The reference shows inserting a probe tip into a cut of meat, emitting green light (column 2, line 7) from a LED (8; column 2, line 8) in to the cut of meat from the probe tip and monitoring the light returning from the probe tip. The meat reflects the green light less than does the fat, thus the transition will be marked by a decrease in the returning light. The amount of returned light is correlated with

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the physical location of the probe using a location measuring arrangement (18, 19, 20). The probe is illustrated as having a generally frusto-conical shape.

5. Claims 6, 7, 10-13, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hennessy (US 4,270,274) in view of Borsboom (US 4,884,891) and Coleman et al (US 4,622,974)

See above for a discussion of Hennessy. Borsboom et al shows a probe for insertion into meat (column 5, lines 9-12) using fibers to direct the light to and from the probe; it would have been obvious to use such fibers in this known manner because, as shown by Borsboom it is a known manner of constructing such a probe. Borsboom shows a central fiber with surrounding fibers; although Borsboom et al uses the central fiber for illumination, and at least suggests that the light be directed from the front of the tip rather than from the side of the tip as shown by Hennessy. It would have been obvious that the surrounding fibers could be used because those in the art would recognize that the passage of light in either direction would be as effective as the passage of light in the other, there is no reason why light going in one direction would react differently than light passing in the other. Making a plurality of measurements of the fat layer at different points in the cut of meat would have been obvious because it would not be expected that the fat layer would be completely uniform; doing so with a plurality of probes would have been obvious because it would allow a plurality of measurements to be made at the same

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time and would thus reduce the time needed. Coleman al shows that it is known to use a beamsplitter to direct light to and from optical fibers in a probe structure; see beamsplitter 44 in figure 1 of that reference.

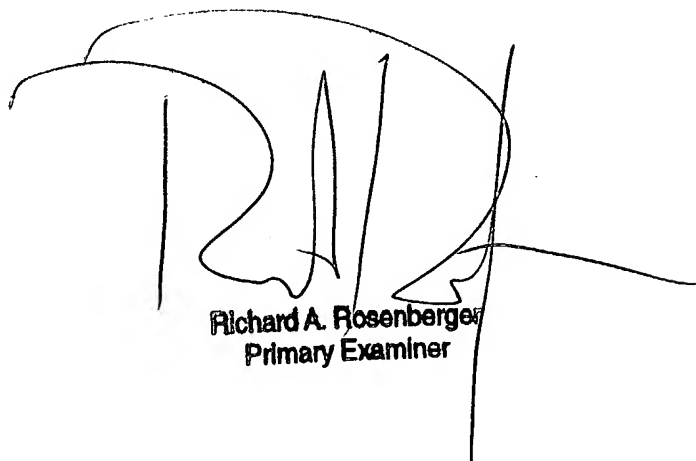
6. Knudsen (US 3,224,320), Northeved et al (US 4,439,037), Richmond et al (US 6,088,114) and Andersen et al (US 6,118,542) and Aignel et al (US 6,563,580) show similar meat probes.

7. Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 872-9306

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger  
6 December 2003



Richard A. Rosenberger  
Primary Examiner